

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Baltimore County
County Office Building
111 Chesapeake Avenue
Suite 319
Towson, MD 21204

Respondent

Proceeding under Section 309(g)(2)(B)
of the Clean Water Act

EPA Docket No. CWA-03-2013-0124

CONSENT AGREEMENT

REGION III HEARING CLERK
EPA REGION III, PHILA.

2013 AUG 12 AM 10:02

RECEIVED

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant"), and Respondent, Baltimore County, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22. The authority to settle this matter has been delegated to the Regional Administrator pursuant to delegation no. 2-52-A (9/1/05). The parties have agreed to settlement of alleged violations of the Clean Water Act by Respondent. This Consent Agreement and accompanying Final Order (jointly "CAFO") simultaneously commence and conclude this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed \$16,000 per day for each day of violation, up to a total penalty amount of \$177,500.

**II. FINDINGS OF FACTS, JURISDICTIONAL ALLEGATIONS
AND CONCLUSIONS OF LAW**

3. Baltimore County, Maryland ("Respondent" or "County") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).
5. Respondent's MS4 is located within the geographic boundaries of the County.
6. Baltimore County encompasses a total area of approximately 384,825 acres. According to the U.S. Census Bureau, as of 2010, the county's population was estimated at approximately 800,000 people.
7. Stormwater from the County drains to a number of water bodies, including the Baltimore Harbor, Back River, Lower Gunpowder River, Middle River, Patapsco River and the Chesapeake Bay, in addition to numerous small tributary creeks and streams, which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
10. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
11. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
12. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
13. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
14. Respondent's MS4 serves a population of at least 100,000 people.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974.

16. MDE issued to Respondent a NPDES MS4 Discharge Permit No. MD0068314, which became effective on June 15, 2005 (hereinafter the "MS4 Permit").

17. The expiration date of the MS4 Permit was June 15, 2010; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.

18. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

19. On December 1, 2002, MDE issued a General Discharge Permit for Storm Water Associated with Industrial Activities ("Industrial SW Permit"). The permit also covers storm water discharges determined to be significant contributor of pollutants. The permit was set to expire on November 30, 2007, but it has been administratively extended.

20. On March 8 - 9, 2011, a compliance inspection team comprised of authorized representatives of EPA inspected Respondent's MS4 program (the "MS4 Inspection").

21. The MS4 Inspection identified a number of violations of Respondent's NPDES permit and the CWA as described below.

Count I: Failure to Adequately Address Illicit Discharges

22. Part III.E.4 of the MS4 Permit requires that the County maintain a program to detect and eliminate illicit discharges. At a minimum, the program shall address illegal dumping and spills, and include appropriate enforcement procedures for investigating and eliminating illegal discharges and dumping.

23. The March 2011 Inspection revealed that Respondent did not implement an adequate program to address illicit discharges through the failure to:

a. Inform and educate the public employees, businesses, and the general public of the hazards associated with illegal discharges; and

b. Train municipal staff, including field employees on illegal discharge identification and reporting procedure.

c. Although the County has established procedures for tracking and reporting illegal discharges complaints received by the County's Watershed Monitoring section of the Department of Environmental Protection and Sustainability, the County has no procedures to assure that complaints received by other County agencies are adequately responded to.

d. The County has not identified or addressed illegal discharges from county-owned facilities, as evidenced by facilities that conduct vehicle washing on impervious surfaces in the absence of best management practices and protective measures in which washwater was seen or evidenced entering into the storm sewer systems. These facilities included the County Department of Education's Cockeysville Service Center and North Point Bus Facility and the County Department of Public Works Perry Road Facility.

24. Respondent's failure to maintain an adequate program for detecting and eliminating illicit discharges violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count II: Failure to Develop and Implement Pollution Prevention Plan

25. Part III.E.5 of the MS4 Permit requires that County identify all County-owned facilities requiring Industrial SW permit coverage, and submit the application for such coverage. The County must report on the status of pollution prevention plan development for these facilities.

26. MDE has authorized coverage under the Industrial SW Permit for the stormwater discharges of several county facilities operated by the Baltimore County Department of Education, determining that such discharges can be significant contributors of pollutants.

27. MDE authorized such coverage for the Kenwood Bus Facility, 600 Stemmers Road, Baltimore, Maryland, under registration number 02SW2115.

28. MDE authorized such coverage for the Cockeysville Service Center, 101 Wight Avenue, Cockeysville, Maryland, under registration number 02SW2121.

29. MDE authorized such coverage for the Hopkins Creek Bus Lot, 104 Weber Avenue, Baltimore, Maryland, under registration number 02SW2122.

30. The Industrial SW Permit requires the permittee to develop and implement a stormwater pollution prevention plan (SWPPP) that includes a description of potential sources of pollutants and stormwater management controls appropriate for the facility.

31. The County has not developed a SWPPP for the Kenwood Bus Facility.

32. The County has not developed a SWPPP for the Cockysville Service Center.

33. The County has not developed a SWPPP for the Hopkins Creek Bus Lot.

34. Respondent's failure to develop and implement SWPPPs for these facilities are violations of the General Industrial SW Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count III: Failure to Enclose Salt Piles

35. Part III.E.5 of the MS4 Permit requires that County identify all County-owned facilities requiring Industrial SW Permit coverage, and submit the application for such coverage.

36. MDE has authorized coverage under the Industrial SW Permit for the stormwater discharges from the Kenwood Bus Facility, 600 Stemmers Road, Baltimore, Maryland, which operated by the Baltimore County Department of Education, under registration number 02SW2115.

37. The Industrial SW Permit requires that storage piles of salt be enclosed or covered to prevent exposure to precipitation.

38. The inspectors observed several stockpiles of roadway salt at the Kenwood Bus Facility that was exposed to precipitation. The inspectors observed traces of salt residue from one stockpile leading to a ditch outside the facility.

39. Respondent's failure to enclose or cover the salt piles at Kenwood Bus Facility is a violation of the Industrial SW Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. CONSENT AGREEMENT

40. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waive any defenses it might have as to jurisdiction and venue.

41. Respondent admits the jurisdictional allegations and agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

42. Respondent hereby expressly waives its right to a hearing or other proceeding on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consent to issuance of this CAFO without adjudication.

43. Each party shall bear its own costs and attorney fees.

44. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

45. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

46. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on this CAFO prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the MDE regarding this action, and will mail a copy of this document to the appropriate Maryland officials.

47. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA and Respondent agree that Respondent will pay an administrative civil penalty in the

amount of forty-seven thousand dollars (\$47,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

48. Respondent shall pay an administrative civil penalty of forty-seven thousand dollars (\$47,000) pursuant to this CAFO within thirty (30) days of the effective date, in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, CWA 03-2013-0124;
- B. All checks shall be made payable to "United States Treasury";
- C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Heather Russell 513-487-2044

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

49. Respondent shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
Mail Code: 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Nina Rivera
Mail Code: 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

50. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.

51. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty due pursuant to this CAFO is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any amount which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

52. This Consent Agreement and the accompanying Final Order settle and resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder,

and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

53. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law, except as specified in paragraph 52.

54. The penalty specified above represents a civil penalty assessed by EPA and shall not be deductible for purposes of Federal taxes.

55. EPA shall have the right to institute a new and separate action to recover civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent is false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

56. The undersigned representative of the Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

57. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

IV. EFFECTIVE DATE

58. Pursuant to 33 U.S.C. § 309(g)(4) and 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded and upon filing with the Regional Hearing Clerk. This CAFO will become final thirty (30) days after issuance, 33 U.S.C. § 1319(g)(5), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT Baltimore County:

By: 

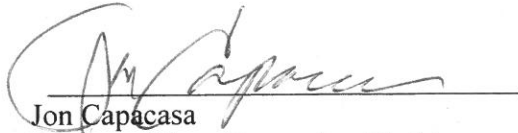
Date: 4/19/13

Name: Fred Homan

Title: County Admin Officer

FOR COMPLAINANT, US ENVIRONMENTAL PROTECTION AGENCY, REGION III:

By:


Jon Capacasa
Director, Water Protection Division
U.S. EPA Region III

Date:

5/29/2013

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Baltimore County
County Office Building
111 Chesapeake Avenue
Suite 319
Towson, MD 21204

Respondent

Proceeding under Section 309(g)(2)(B)
of the Clean Water Act

EPA Docket No. CWA-03-2013-0124

FINAL ORDER

PURSUANT TO Section 309(g) of the Clean Water Act, as amended, 33 U.S.C. § 1319 ("CWA"), and the Consolidated Rules of Practice, and having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 309(g)(3) of the CWA, IT IS HEREBY ORDERED that Respondent pay forty-seven thousand dollars (\$47,000) in accordance with Section III of the Consent Agreement.

The foregoing Consent Agreement and this Final Order shall be issued after the forty (40) days public comment period described at 33 U.S.C. § 309(g)(4) and 40 C.F.R. § 22.45(b) and upon filing with Regional Hearing Clerk. It will become effective thirty (30) days after issuance, 33 U.S.C. § 309(g)(5).

AUG 06 2013

Date


Shawn M. Garvin
Regional Administrator
U.S. Environmental Protection Agency, Region III

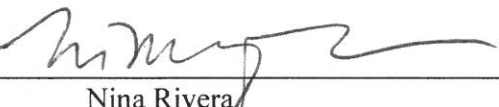
CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order, and that copies of this document were sent to the following individual in the manner described below:

By first class, certified mail, return receipt requested:

Michael Field
Baltimore County Office of Law
Historic Courthouse
400 Washington Avenue
Towson, MD 21204

Date: AUG 12 2013



Nina Rivera
Sr. Asst. Regional Counsel
US EPA Region III

